



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
**SECURITIES AND EXCHANGE COMMISSION**  
WASHINGTON, D.C. 20549

July 31, 2013

Mark D. Fitterman, Esq.  
Morgan Lewis & Bockius LLP  
101 Park Avenue  
New York, NY 10178-0060

**Re: In the Matter of A.R. Schmeidler & Co., Inc.  
Securities Exchange Act Release No. 70089, Investment Advisers Act Release No. 3637,  
Administrative Proceeding File No. 3-15399—Waiver Request under Regulation A and  
Rule 505 of Regulation D**

Dear Mr. Fitterman:

This responds to your letter dated today, written on behalf of A.R. Schmeidler & Co., Inc. (“ARS”) and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933 (“Securities Act”). You requested a waiver of disqualifications from exemptions available under Regulation A and Rule 505 that may have arisen by virtue of the order entered July 31, 2013 by the Securities and Exchange Commission in In the Matter of A.R. Schmeidler & Co., Inc. et al., Release No. 3637 (the “Order”).

The Order was entered against ARS under Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940. It requires ARS to pay disgorgement of \$757,876.88, prejudgment interest of \$78,688.57, and a civil monetary penalty of \$175,000. The Order also requires ARS to comply with an enumerated list of undertakings, including an undertaking to retain the services of an independent consultant, and contemplates that such compliance will require several months to accomplish.

According to your letter, ARS has requested a waiver because it understands that entry of the Order may have disqualified ARS from participating in Regulation A and Rule 505 offerings insofar as ARS is subject to an order of the Commission entered under Section 15(b) of the Exchange Act and Section 203(e) of the Investment Advisers Act of 1940.

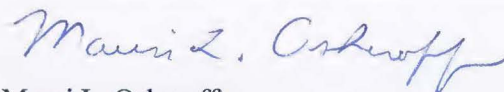
For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Order. We also have assumed that ARS will comply with the Order.

On the basis of your letter, I have determined that you have made showings of good cause under Rule 262 and Rule 505 that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 by reason of entry of the Order against ARS. Accordingly, pursuant to delegated authority, on behalf of the Division of Corporation Finance, and without necessarily agreeing that any such disqualifications arose by virtue of entry of the Order,

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ARS is granted relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 that may have arisen as a result of entry of the Order.

Very truly yours,

A handwritten signature in blue ink that reads "Mauri L. Osheroff". The signature is written in a cursive style with a large, sweeping initial "M".

Mauri L. Osheroff  
Associate Director (Regulatory Policy)

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**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

**Mark Fitterman**  
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July 31, 2013

**VIA FIRST CLASS MAIL AND E-MAIL**

Gerald J. Laporte, Esq.  
Chief, Office of Small Business Policy  
Division of Corporate Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E., 3rd Floor  
Washington, D.C. 20549-3628

Re: **In the Matter of A.R. Schmeidler & Co., Inc.**

Dear Mr. Laporte:

We submit this letter on behalf of our client A.R. Schmeidler & Co., Inc. (“ARS” or “Settling Firm”), which has settled the above-referenced proceeding by the United States Securities and Exchange Commission (“Commission”).

ARS hereby requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Commission promulgated under the Securities Act of 1933 (the “Securities Act”), a waiver of any disqualifications from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to any person as a result of the entry of the Commission’s Order (“Order”) against ARS described below. The Settling Firm requests that this waiver be granted effective today. It is our understanding that the Staff of the Division of Enforcement (the “Staff”) does not oppose the grant of the requested waiver.

**BACKGROUND**

The staff of the Division of Enforcement engaged in settlement discussions with the Settling Firm in connection with the above-captioned administrative proceeding. As a result of these discussions, ARS submitted an executed Offer of Settlement (“Offer”), solely for the purpose of proceedings brought by or on behalf of the Commission, and the Settling Firm consented to the entry of the Order.

Under the Order entered under Section 15(b)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”), the Settling Firm will cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder. The Commission’s Order finds that, beginning in 2007, ARS failed to seek best execution. As a result, ARS willfully violated Section 206(2) of the Advisers Act. The Order also finds that ARS’s failure to implement procedures reasonably designed to prevent its best execution violations further willfully violated Section 206(4) of the Advisers Act and Rule 205(4)-7 promulgated thereunder. The Order was entered without ARS admitting or denying the foregoing findings.

The Order requires the Settling Firm to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder, censures the Settling Firm, requires it to comply with the undertakings specified in the Order, and provides that the Settling Firm will pay disgorgement of \$757,876.88, prejudgment interest of \$78,688.57 and a civil monetary penalty in the amount of \$175,000.

The undertakings in the Order require, among other things, that ARS (i) engage a qualified independent consultant to assist ARS in developing and implementing policies and procedures reasonably designed to promote compliance with ARS’s duty to seek best execution for its advisory clients, (ii) require the independent consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the independent consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with ARS, or any of its present or former affiliates, directors, officers, employees or agents acting in their capacity, and (iii) certify, in writing, compliance with the undertakings set forth in (i) and (ii) above.

## **DISCUSSION**

The Settling Firm understands that the entry of the Order could disqualify offerings otherwise exempt under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, insofar as the Order causes the Settling Firm to be “subject to an order of the Commission entered pursuant to Section 15(b) . . . of the Exchange Act or Section 203(e) . . . of the Investment Advisers Act of 1940. . . .” See 17 C.F.R. § 230.262(b)(3). The Commission has the authority to waive the Regulations A and D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. See 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C).

The Settling Firm requests that the Commission waive any disqualifying effects that entry of the Order may have under Regulation A and Rule 505 of Regulation D with respect to the Settling Firm, its affiliates and other persons on the following grounds:

1. The conduct of the Settling Firm addressed in the Order does not relate to offerings under Regulation A or Rule 505 of Regulation D.

2. The Settling Firm has cooperated with the Division of Enforcement in the investigation of these matters and has agreed to settle rather than litigate the Commission's Enforcement case.
3. The disqualification of the Settling Firm, its affiliates, or other persons from the exemptions under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe because under the Order the Settling Firm: (a) is required to cease and desist from committing or causing any violations or any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-7 promulgated thereunder; (b) is required to comply with substantial undertakings, including engaging a qualified independent consultant to assist ARS in developing and implementing policies and procedures to promote compliance with ARS's duty to seek best execution for its advisory clients; and (c) will pay disgorgement of \$757,876.88, prejudgment interest of \$78,688.57 and a civil monetary penalty in the amount of \$175,000. As noted above, it is our understanding that the Staff does not object to the grant of the requested waiver.
4. The disqualification may affect the business operations of the Settling Firm, its issuer affiliates, and third party issuers by impairing their ability to issue securities pursuant to these exemptions to raise new capital or for other purposes. In addition, the disqualification may place the Settling Firm and its affiliates at a competitive disadvantage with respect to third parties.

In light of the grounds for relief discussed above, we believe that disqualification is not necessary, in the public interest, or for the protection of investors, and that the Settling Firm has shown good cause that relief should be granted. Accordingly, we respectfully request that the Commission, or an appropriate Commission employee pursuant to appropriate delegated authority, waive, effective as of today's date, the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent that they may be applicable as a result of the entry of the Order.<sup>1</sup>

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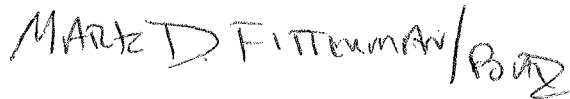
<sup>1</sup> We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Harbert Management Corporation, SEC No-Action Letter (pub. avail. July 3, 2012); H&R Block, Inc., SEC No-Action Letter (pub. avail. May 2, 2012); UBS Financial Services of Puerto Rico, SEC No-Action Letter (pub. avail. May 1, 2012); UBS Securities LLC, SEC No-Action Letter (pub. avail. Nov. 10, 2011); UBS Financial Services Inc., SEC No-Action Letter (pub. avail. May 9, 2011); Citigroup Inc., SEC No-Action Letter (pub. avail. Oct. 19, 2010); Evergreen Investment Management Co., LLC, SEC No-Action Letter (pub. avail. June 8, 2009); ARS AG, SEC No-Action Letter (pub. avail. Mar. 19, 2009); Citigroup Global Markets, Inc., SEC No-Action Letter (pub. avail. March 23, 2005); Morgan Stanley & Co. Incorporated, SEC No-Action Letter (pub. avail. Feb. 4, 2005); Lehman Brothers Inc., SEC No-Action Letter (pub. avail. Oct. 31, 2003); Citigroup Global Markets Inc., f/k/a/ Salomon Smith Barney Inc., SEC No. Action Letter (pub. avail. October 31, 2003); and Credit Suisse First Boston Corporation, SEC No-Action Letter (pub. avail. Jan. 29, 2002).

Gerald J. Laporte, Esquire  
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**Morgan Lewis**  
C O U N S E L O R S   A T   L A W

Please do not hesitate to call the undersigned at (202) 739-5019 regarding this request.

Sincerely,

Handwritten signature of Mark D. Fitterman in black ink, written in a cursive style. The signature includes the name "MARK D. FITTERMAN" followed by a stylized flourish that appears to be "BODZ".

Mark D. Fitterman

cc: Johanna Losert, SEC  
Anthony Barone, SEC  
Ben Indek, Morgan, Lewis & Bockius LLP  
Jennifer Klass, Morgan, Lewis & Bockius LLP  
Ronald Janis, Day Pitney LLP